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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re JACOB M., A Person Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERNEST M.,

Defendant and Appellant.

F045897

(Super. Ct. No. 88186-4)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Fresno County. A. Dennis Caeton, Judge.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, and Howard K. Watkins, Deputy County Counsel, for Plaintiff and Respondent.

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Ernest M. appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to his son Jacob.<sup>1</sup> Appellant contends the court should have found termination

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\* Before Vartabedian, Acting P.J., Buckley, J., and Levy, J.

would be detrimental either on account of his bond with the child or the bond between the child and his siblings. (§ 366.26, subd. (c)(1)(A) & (E).) On review, we will affirm.

### **PROCEDURAL AND FACTUAL HISTORY**

In June 2000, when Jacob was one year old, the Fresno County Superior Court adjudged him and his three older siblings dependent children of the court and removed them from parental custody. The court previously determined Jacob came within its jurisdiction under section 300, subdivision (b) based on his mother's extensive drug use history and his father's historic failure to protect Jacob and the other children from their mother's drug use. The father had his own substance abuse problem although it was not a basis for dependency jurisdiction.

The parents previously lost custody of their older children due to the same issues and failed to reunify with the two oldest ones for whom the court had selected a permanent plan of legal guardianship. However, the guardians had recently allowed the parents to take the two children to live with them (the parents).<sup>2</sup> Due in part to the parents' prior failure to take advantage of reunification services, the court denied them reunification services and set a hearing to select and implement a permanent plan (§ 366.26).

By the end of 2000, the court had selected legal guardianship with the maternal grandmother as the permanent plan for the older children and ordered a permanent plan of legal guardianship for Jacob with his maternal aunt Veronica C. and her husband. Between 2001 and 2002, visitation between appellant and his children gradually expanded from monitored once-a-month visits to monthly liberal visits. However, there were concerns that the children were exposed to drug use while they were with appellant.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> This led to the setting aside of that legal guardianship.

Also, Jacob who was generally well behaved and social was reportedly more aggressive and defiant immediately after unsupervised visits with appellant.

By November 2002, friends of Veronica C. expressed an interest in adopting Jacob. The friends' home had been also evaluated and approved for adoptive placement. Veronica C. and her husband did not pursue adopting Jacob because they purportedly wanted him to have a permanent home detached from his parents and their problems, the implication being that the guardians believed they could not or would not detach themselves from contact with the family. Consequently, respondent Fresno County Department of Children and Family Services (the department) requested a new permanency planning hearing for Jacob.

Before the court would resolve whether to set a new section 366.26 hearing, it ordered an bonding study for Jacob, his parents, his guardians and the prospective adoptive parents. Relevant to this appeal, the psychologist, who conducted the bonding study, Dr. Jeffrey Mar, offered his opinion that Jacob viewed his father as a favorite uncle rather than a parent figure. Although they appeared to share a very comfortable rapport, they did not share a parent/child relationship. In May 2003, the court ordered a new section 366.26 hearing for Jacob. That hearing, which was contested, did not commence until April 2004.

In the interim and again relevant to this appeal, appellant submitted a report by Dr. Eva McKenzie, a psychologist who had conducted a August 2003 bonding study involving appellant and his four children. According to McKenzie, Jacob appeared to have a well-established parent-child relationship with appellant. She stopped short, however, of claiming Jacob would benefit more from maintaining his relationship with appellant than from being adopted. In this regard, she alluded to appellant's inability to remain free from his alcohol and drug use. McKenzie also offered an opinion that Jacob appeared to have a strong and positive attachment to his siblings and would experience distress at the loss of those relationships. Once again, however, she couched her opinion

regarding whether termination would be detrimental. She noted that if Jacob was as emotionally resilient as he had been described in reports, his ability to recover from distress brought on by a loss of the sibling relationships might be good. McKenzie testified at the April 2004 hearing repeating the opinions expressed in her written report. She added in part that she had no information as to whether his sibling relationship outweighed the benefit of adoption. She also reiterated her concern over just how resilient Jacob was.

Following the hearing, the court found the evidence insufficient to conclude the sibling relationship was so strong that it would be detrimental to sever it. Meanwhile, the court was inclined to assume a strong parent-child relationship. However, the court expressed concern regarding Jacob's resilience given that under the department's proposal Jacob would leave his aunt's home in which he had lived for three and a half years in order to be placed with his prospective adoptive family. Consequently, the court continued the permanency planning hearing for yet another evaluation to assess whether Jacob had the emotional resiliency to terminate his relationship with appellant given the child's other circumstances.

Teri Roltgen, the therapist who in turn evaluated Jacob, offered her opinion that he was "resilient enough to grieve the loss of his biological parents and with the support [of] and continued contact with [his aunt] move to an adoptive placement." Notably, Roltgen found that Jacob's attachment was to his aunt and disruptions in that relationship, including his unsupervised visits with his father, hampered "his ability to form a truly secure attachment." Absent from the therapist's report was any indication that Jacob perceived appellant as a significant, secure person in his life. Roltgen concluded with a series of therapeutic recommendations to assist Jacob and the adoptive family to assure Jacob's attachment.

At the continued hearing, the court noted it had read and considered the latest evaluation and heard closing arguments. Thereafter, the court found it likely Jacob would be adopted and terminated parental rights.

### DISCUSSION

Appellant contends the court erred by not finding that adoption would be detrimental to Jacob. In appellant's estimation, there was substantial evidence to support a detriment finding based on either the relationship he shared with Jacob (§ 366.26, subd. (c)(1)(A) or the sibling relationship (§ 366.26, subd. (c)(1)(E)). We disagree with appellant both in regard to the standard of review as well as on the merits.

Although section 366.26, subdivision (c)(1) acknowledges that termination may be detrimental under specifically designated circumstances, a finding of no detriment is not a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) When, as here, a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is not one of substantial evidence but whether the juvenile court abused its discretion. (*Id.* at p. 1351.) On review of the record, we find no abuse of discretion.

If, as in this case, the child is likely to be adopted, adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a **compelling** reason for finding that termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

It was appellant's heavy burden to establish that termination of his rights would be detrimental to Jacob. (*In re Celine R., supra*, 32 Cal.4th at p. 62.) Regardless of whether there exists a strong parent-child relationship or a sibling relationship, the court's analysis of a detriment claim does not stop there. Appellant must also show that a continued parent/child or sibling relationship is so beneficial to Jacob that at least one of those relationships outweighs the benefits Jacob would receive through a permanent plan

of adoption. (*In re L.Y.L* (2002) 101 Cal.App.4th 942, 949; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

On the record before us, we find no such evidence to compel a detriment finding. While appellant, in crafting his argument, relies heavily upon the opinions of Dr. McKenzie, we would remind appellant that not even she believed a continued parent/child or sibling relationship outweighed the benefit of adoption to Jacob. At most she expressed concern over the child's resilience. What is particularly notable about Jacob's case is that the potential for detriment came not from severing the parent/child or sibling relationship but rather from bringing an end to his placement with his aunt who had been his legal guardian. Even she wanted Jacob freed for adoption, although she was unwilling to become his adoptive parent. Nevertheless, there was evidence that Jacob was sufficiently resilient to adapt and, with his aunt's support, make a positive attachment with his prospective adoptive parents.

We therefore conclude the court acted properly in rejecting appellant's arguments and terminating parental rights.

### **DISPOSITION**

The order terminating parental rights is affirmed.